Towne Ford Sales and Town Imports *and* International Association of Machinists and Aerospace Workers, AFL–CIO, District Lodge No. 190, Local Lodge No. 1414. Case 20–CA–17471

30 April 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS HUNTER AND DENNIS

On 24 June 1983 Administrative Law Judge Earldean V. S. Robbins issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed a letter and brief in opposition to the exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order.

The judge concluded that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to recognize the International Association of Machinsts and Aerospace Workers, AFL–CIO, District Lodge No. 190, Local Lodge No. 1414 as the exclusive representative of its employees at its Town Imports facility, by refusing to acknowledge that Town Imports is bound by the collective-bargaining agreement between the Respondent's Towne Ford Sales facility and the Union, and by failing to comply with all the terms and conditions of said agreement as to the mechanics of Town Imports. The judge found that Town Imports' mechanics constitute an accretion to the appropriate unit covered by the collective-bargaining agreement between Towne Ford Sales and the Union. In so doing, she determined that the factors favoring accretion outweighed the factors militating against it. We disagree.

The Respondent, Towne Ford Sales and Town Imports, is a single employer operation engaged in the retail sale, service, and distribution of automobiles. Towne Ford Sales and the Union have been parties to successive collective-bargaining agreements covering Towne Ford Sales mechanics for a number of years. The current agreement is effective through 15 July 1983 and thereafter for 1-year terms subject to revision by either party. In August 1982, the Respondent's president formed Town Imports for the distribution, retail sale, and service of Mitsubishi automobiles. The new corporation was housed in Towne Ford Sales' former used-car showroom and new-car preparation and conditioning facility, across the street from Towne Ford Sales' main location. This facility was renovated for Town Imports and the two Towne Ford Sales mechanics working in the preparation and conditioning department were moved to Towne Ford's main offices. Town Imports hired a mechanic in August 1982 and a second one 29 November 1982. In September 1982 the Union requested that the Respondent sign a letter of understanding by which the Respondent agreed that the employees who worked at Town Imports would be covered by the Union's existing agreement with Towne Ford Sales. The Respondent refused and on 15 October 1982 the Union filed the charge in this proceeding.

Towne Ford Sales and Town Imports have common offices, common ownership, and common management at the policymaking level. The two enterprises engage in joint advertising and have a joint salesmen corps. Their president formulates the labor policies affecting the employees of both Companies. He spends approximately 30 percent of his working time running Town Imports. The mechanics of Towne Ford Sales perform work on domestic cars while Town Imports mechanics work on foreign cars. Town Imports mechanics use some of Towne Ford Sales equipment and tools and Towne Ford Sales mechanics occasionally work on Town Imports cars. The two groups of employees possess the same job skills and utilize similar tools and equipment. The locations are across the street from each other. However, Towne Ford Sales and Town Imports each has its own service manager who hires the mechanics and directs the work in each of the facilities. Thus, there is no common immediate supervisor and no day-to-day contact between the two groups of employees.

The Board has followed a restrictive policy in finding accretion because it forecloses the employees' basic right to select their bargaining representative. We stated in *Melbet Jewelry Co.*, 180 NLRB 107, 110 (1969), that the Board "will not, under the guise of accretion, compel a group of employees, who may constitute a separate appropriate unit, to be included in an overall unit without allowing those employees the opportunity of expressing their preference in a secret election."

In examining this issue, the Board has identified several factors as especially important in a finding of accretion. One of these elements is the degree of interchange of employees between the affiliated companies. *Mac Towing*, 262 NLRB 1331 (1982). No weight is assigned to the fact that interchange is feasible when in fact there has been no actual interchange of employees. *Combustion Engineering*, 195 NLRB 909, 912 (1972). Another important element is whether the day-to-day supervision of em-

ployees is the same in the group sought to be accreted. *Save-It Discount Foods*, 263 NLRB 689 (1982); *Weatherite Co.*, 261 NLRB 667 (1982). This element is particularly significant, since the day-to-day problems and concerns among the employees at one location may not necessarily be shared by employees who are separately supervised at another location. *Renzetti's Market*, 238 NLRB 174, 175 (1978).

In the instant case, although Towne Ford Sales mechanics might occasionally work on Town Imports cars, there is no evidence of "actual" interchange of employees or of any regular contacts between the mechanics employed at the two locations. It is also apparent that the daily operations of the facilities are separate and autonomous and that the day-to-day control and supervision of matters of interest to the employees are handled entirely within each of the facilities by the respective service managers. The control by the Respondent's president of general policy does not detract from the significance of either the independent supervision of the employees on daily matters and concerns or the lack of interchange among the two groups of employees.

Accordingly, we find that the other factors in the instant case are insufficient to establish accretion in the face of separate daily supervision and lack of interchange. Based on the foregoing, we conclude that the General Counsel has not established by a preponderance of the evidence that the mechanics at Town Imports constitute an accretion to the existing collective-bargaining unit represented by the Union. Therefore, we shall dismiss the complaint in its entirety.

ORDER

The complaint is dismissed.

DECISION

STATEMENT OF THE CASE

EARLDEAN V. S. ROBBINS, Administrative Law Judge. This matter was heard before me in San Francisco, California, on April 7, 1983. The charge was filed by International Association of Machinists and Aerospace Workers, AFL–CIO, District Lodge No. 190, Local Lodge No. 1414, herein called the Union, on October 15, 1982, and was served on Towne Ford Sales and Town Imports, herein respectively called Ford and Imports and collectively called Respondent, on October 16, 1982. The complaint, which was issued on November 24, 1982, alleges that Respondent violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act, herein called the Act. The basic issues herein are whether the mechanics at Import are an accretion to the mechanics unit at Ford and whether Respondent violated Section 8(a)(1) and (5) of the Act by refusing to apply the Ford collective-bargaining agreement to Import employees.

On the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by the parties, I make the following

FINDINGS OF FACT

I. JURISDICTION

At all times material herein, Ford, a California corporation with an office and place of business at 1601 El Camino Real, Redwood City, California, herein called the Ford facility, has been engaged in the retail sale, repair, and distribution of automobiles. During the past calendar year ending December 31, 1981, Ford, in the course and conduct of said business operations, derived gross revenues in excess of $500,000, and purchased and received at said facility products, goods, and materials valued in excess of $50,000 directly from points outside the State of California.

About mid-August 1982, Ben Kopf, president of Ford, formed Imports, a California corporation with an office and place of business at 1555 El Camino Real, Redwood City, California, which is engaged in the retail sale, service, and distribution of Mitsubishi automobiles.

At all times material herein, Ford and Imports have been affiliated business enterprises with common offices, ownership, and management at the policymaking level. They have engaged in joint advertising and the president for both entities formulates labor policies affecting employees at said operations. The complaint alleges, the parties stipulate, and I find that, by virtue of these operations, Ford and Imports constitute a single integrated business enterprise and a single employer within the meaning of the Act, and is now, and at all times material herein has been, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

The complaint alleges, Respondent admits, and I find that the Union is now, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Facts*

Ford and the Union have had a collective-bargaining relationship for a number of years covering Ford's mechanic employees and have been parties to successive collective-bargaining agreements. The current agreement, effective by its terms from July 16, 1980, to July 15, 1983, provides, inter alia:

SECTION I

Recognition

The Employer hereby recognizes the Union as the sole collective bargaining agent for all employ-

ees coming under the jurisdiction of the Union exclusive of supervisory personnel.

SECTION II

Work Jurisdiction

The work covered by this Agreement is, and shall be, the erecting, assembling, installing, repairing, or dismantling of all or any parts thereof of automobiles, automobile engines, and motors, driving, or driven parts thereof, and all electrical devises pertaining thereto, whether driven by gasoline, oil, diesel, butane, or electricity, including all fabric or metal appurtenances thereto, composed of steel or iron, whether structural, angle, T, galvanized, bar, tube, rod, shafting, sheet or plate, or of nickel, bronze, lead, copper, brass, aluminum, babbit, or other metal substances thereof.

All Oxy-acetylene, helearc, or electric cutting or welding when used to substitute the former method of performing automobile work, including building, repairing, and dismantling.

The repairing, refinishing, and maintaining of all automobiles, trucks, tractors, trailers, motorcycles, or other automotive repair work.

Prior to mid-August 1982,[1] the Ford facility included a new car showroom at 1601 El Camino Real. Behind the showroom was a lubrication area and, to the rear of that area, the main shop facility. The body shop was located on an adjoining property, and across the street, at 1555 El Camino Real, was located the used car showroom, a storage area, and the new car preparation and conditioning department and detail shop. Body shop mechanics and painters worked in the body shop, new car preparation mechanics and detailers worked at 1555 El Camino Real, and other mechanics worked in the main shop at 1601 El Camino Real.

Ben Kopf was, and is, the president and owner of Ford. In mid-August, Kopf formed Imports and entered into negotiations with Mitsubishi for Imports to be granted a franchise for the retail sale, service, and distribution of Mitsubishi automobiles. The facility at 1555 El Camino Real was renovated to house Imports and the Ford new car preparation and detail departments, with two mechanics, were moved to the 1601 El Camino Real location.

According to Kopf, the building renovations, which were completed during the first week in November, were made so as to completely separate the Imports facility at 1555 El Camino Real from the Ford facility at 1601 El Camino Real. However, he admitted that during the period of the renovation construction possibly some Imports parts were stored at Ford and that the Ford hoists were not removed from the Imports facility. He denied that Ford tools were used by Imports and testified that Imports purchased all new equipment. Also, according to Kopf, Imports and Ford have completely separate corps of salesmen. He admitted, however, that, if a Ford salesman cannot sell a customer a Ford car, he suggests a Mitsubishi and, if the customer is interested, the customer is turned over to an Imports salesman. If the customer purchases a car from Imports, the Ford and Imports salesmen split the commission. The same procedure in reverse is followed with a customer who initially visits the Imports showroom.

Kopf also testified that Imports salesmen and Ford salesmen have different business cards. When shown a business card which indicated that the salesmen sell both Ford and Mitsubishi automobiles, he testified that the card was one that was used in the beginning before the policies between Ford and Imports were set. However, the undenied testimony of Ford mechanic employee Donald Grossman, which I credit, is that these business cards were given to him by Ford salesmen on the day preceding the hearing when he requested them to give him one of their business cards. Further, both Grossman and Larry Knight, another mechanic employed by Ford, testified, without contradiction, that Imports mechanics use Ford transmission jacks, battery jumpers, and acetylene welding equipment and that Imports disposes of its garbage in Ford's garbage dumpster. Also, according to Grossman, Ben Hooper, Imports' service manager, was observed on one occasion placing an Imports order on a Ford purchase order form.

Kopf testified that there is no interchange of employees between Ford and Imports. However, employee witnesses testified, without contradiction, that they have observed Ford mechanics doing undersealing, painting, checking and readjusting alignment, and battery work on Imports cars and also, on at least one occasion, assisting the Imports service manager in checking new cars on delivery. Kopf admitted that Ford does body work, undersealing, front end alignments, brake work, upholstery work, and tire work for Imports. According to him, this is done in accordance with a contractual arrangement and, further, Ford regularly does body work for other dealers and Imports contracts out various types of mechanical work to shops other than Ford. However, no documentary evidence was offered to support this testimony.

Imports' first sale was consumated on September 24, approximately 5 weeks before the renovation was completed at 1555 El Camino Real. At the time Imports commenced operations, which Kopf testifies was on completion of the renovation during the first week in November, Ford had 17 mechanics in its employ. Imports had one mechanic in its employ, who was hired in August and immediately sent to school. After completing several weeks of training, his initial job duties, commencing October 1, were to prep and condition the new Mitsubishi cars.[2] As the renovation was not yet complete, he initially worked in temporary quarters at Ford's main shop.[3] A second mechanic commenced work on November 29.

[1] All dates herein will be in 1982 unless otherwise indicated.

[2] According to Kopf, the startup duties of mechanics in a new franchise operation are generaly limited to prep and conditioning work and warranty work. Retail service work is not generally done for the first few months.

[3] Although subsequently retracted by Kopf, I credit Kopf's initial testimony in this regard since Imports' facility was still being renovated during the first month of the mechanic's employ.

Ben Hooper, Ford's parts and department manager, worked both in that position and as Imports' service and parts manager from the time Imports commenced operations until January 1, 1983, when he ceased working for Ford and commenced full-time employment at Imports. At Ford, mechanics are hired, and their work is directed, by the Ford service manager with specific work assignments being made by the Ford dispatcher. At Imports, mechanics are hired and work is assigned and directed by the Imports service manager.

Although the parties stipulated that Ford and Imports are a single integrated business enterprise and a single employer within the meaning of the Act, and that Kopf formulates the labor policies at both operations, Kopf testified that he has no involvement in the day-to-day operation of Imports, and that the only thing he does there is to set policy. According to him, he has no office at Imports and he spends 99 percent of his time at Ford. However, in his November 15 affidavit, he stated, "I devote about 30% of my time directing and running Town Imports." In explaining this inconsistency, he testified that as of the date of the affidavit he was in the process of forming Imports and had to spend perhaps 20 to 30 percent of his time in obtaining permits and "getting things together" for the corporation and the renovation of the building facility. I do not credit this explanation since by November 15, according to his testimony, the corporation was formed and had commenced operations, and the renovation was complete. In these circumstances, I find his prehearing affidavit to be more reliable.

Lee Stafford, business representative for the Union assigned to service Towne Ford, testified that he first learned about the organization of Imports around the first week in August through a rumor from the Ford shop employees that Ford was going to take on a new Mitsubishi franchise. No specific company name was mentioned. Around the second week in August, according to Stafford, Kopf telephoned him and asked whether Ford employee Manny Calassa could take a withdrawal from the Union if he went to work for the new Mitsubishi franchise if it was nonunion. Stafford told Kopf that, if Calassa was working with the tools of the trade, he could not take a withdrawal card, and that he would either have to drop from the Union or continue paying dues. Kopf did not mentioned the name of the new company. Kopf further said that the mechanic hired would have to go to school in Los Angeles the first or second week in September and that he wanted to get the matter settled so he could send whoever was going to work for the new company to this school. Stafford further testified that he does not think that during this conversation Kopf actually said he was going to operate the new store nonunion; rather, he suggested that he preferred that any person transferring to the new company should not be an active union member.

Kopf agreed that he did inquire as to whether Calassa could withdraw from the Union and transfer to Imports. However, according to him, Stafford said it could be done one or two different ways. One was that Calassa could transfer, pay his union dues, and "work under the union agreement solely"; but Imports would not have to sign a union contract. Kopf said that was agreeable with him and Stafford never stated the second possibility.

A week or so later, according to Stafford, he telephoned Kopf and arranged to meet with him on September 2. The meeting did take place. Dave Powell, a Teamsters representative, was also present. There was some discussion as to Calassa. Kopf said he did not think that Calassa was going to transfer to Imports. Stafford then gave Kopf a letter of understanding which stated that the employees who worked at the Mitsubishi franchise would be covered by the working conditions and benefits of the Union's existing agreement with Ford.[4] Kopf asked if the letter of understanding would cover just one employee. Stafford replied no, and that any employee employed by the new company to do bargaining unit work would be covered under the letter of understanding. The Teamsters representative presented an identical letter regarding the job classifications represented by the Teamsters Union. Kopf said he would have his attorney look at the letters, and that he was leaving for vacation and would return around September 20 or 25. Around September 20, Stafford began leaving telephone messages for Kopf to telephone him. On September 23, Kopf returned the calls. At this time, according to Stafford, Kopf said that he had decided he was going to hire a person, and that the new company was going to operate nonunion and he was not going to sign the letter of understanding.

Kopf testified that, to the best of his recollection, Stafford gave him the letter of understanding and told him he would have to sign it in order for Calassa to work for the new company. Kopf asked what would be involved if he hired another person, i.e., would that person have to join the Union. Stafford said, yes, under these conditions. Kopf said that was not acceptable, and that it was not what they had originally agreed to on the telephone.

B. *Conclusions*

Although Respondent admits that Ford and Imports are a single employer, this does not necessarily establish that an employerwide unit is appropriate since the factors relevant in identifying the breadth of an employer's operation are not conclusively determinative of the scope of an appropriate unit. *South Prairie Construction v. Operating Engineers*, 425 U.S. 800, 805 (1976). However, even though the factors considered by the Board in determining accretion issues are substantially the same as those involved in determining appropriate units, the Board and the courts have consistently construed the Board's accretion doctrine narrowly.

The rationale for such narrow construction is that, where absorption of a new facility into an existing larger facility is in the issue, the employees' rights of self-organization under Section 7 of the Act are more at stake than in initial representation proceedings since the employees at the new facility would be deprived of the opportunity to participate in a resolution of the representa-

[4] Stafford testified that the reason he was seeking a letter of understanding was that the Union had been told that Ford and the Mitsubishi dealership would be two separate companies.

tion issue. *Sheraton-Kauai Corp. v. NLRB*, 429 F.2d 1352 (9th Cir. 1970). The Board "will not . . . under the guise of accretion, compel a group of employees, who may constitute a separate appropriate unit, to be included in an overall unit without allowing those employees the opportunity of expressing their preference in a secret election or by some other evidence that they wished to authorize the Union to represent them." *Melbet Jewelry Co.*, 180 NLRB 107, 110 (1969).

The facts considered by the Board as "particularly relevant" in determining whether there has been an accretion are "bargaining history; the functional integration of operations; the differences in the types of work and the skills of employees; the extent of centralization of management and supervision, particularly in regard to labor relations, hiring, discipline, and control of day-to-day operations; and the extent of interchange and contact between the groups of employees." *Bryan Infants Wear Co.*, 235 NLRB 1305 (1978), *Safety Electric Corp.*, 239 NLRB 40 (1978); *Arundel Corp.*, 252 NLRB 397 (1980).

Here, Imports has no bargaining history. Both groups of employees utilize the same skills and the same type of tools and equipment. Kopf is responsible for the overall management of both Imports and Ford, including the labor policy. The two locations are in close geographical proximity. Imports' mechanics use Ford's tools and Ford mechanics work on Import cars.[5] All of these factors support an accretion. Militating against a finding of accretion are the lack of common immediate supervision of the two groups of employees and the lack of evidence as to day-to-day contacts between them. However, on balance, I conclude that the relevant factors support a finding that Imports' mechanics do not constitute a separate appropriate unit but rather constitute an accretion to the Ford unit represented by the Union. *Safety Electric Corp.*, above.

Accordingly, I find that Respondent violated Section 8(a)(5) and (1) of the Act by refusing to apply the terms and conditions of the collective-bargaining agreement between Ford and the Union to the mechanics in Imports employ.

CONCLUSIONS OF LAW

1. Towne Ford Sales and Town Imports are a single employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. International Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge No. 190, Local Lodge No. 1414 is a labor organization within the meaning of Section 2(5) of the Act.

3. The following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All machinists, mechanics, apprentices, painters and body men, including the service writers employed by the Employer at their facilities in Redwood City, California; excluding employees covered by collective bargaining agreements with other unions, office clerical employees, guards, and supervisors as defined in the Act.

4. At all times material herein the Union has been, and is now, the exclusive representative of all employees in the above-described appropriate unit for the purposes of collective bargaining.

5. By refusing to recognize the Union as the collective-bargaining representative of all the employees in the above-described unit; by refusing to acknowledge that Town Imports is bound by the collective-bargaining agreement between Towne Ford Sales and the Union; and by failing to comply with all the terms and conditions of the aforesaid agreement as to unit employees on Town Imports' payroll, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the purposes of the Act.

Since I have found that the mechanic employees in the employ of Town Import are an accretion to the unit of mechanic employees at Towne Ford Sales and that Respondent has violated Section 8(a)(5) and (1) of the Act by refusing to apply the collective-bargaining agreement between Towne Ford Sales and the Union to employees on Town Imports' payroll, Respondent shall be ordered to recognize the Union as the exclusive bargaining representative of all the employees in the appropriate unit, and to give effect to the terms and provisions of the collective-bargaining agreement between the Union and Towne Ford Sales retroactively and prospectively. I shall also recommend that Respondent make whole unit employees for any loss of earnings or benefits they may have suffered by the unlawful refusal to apply the terms of the collective-bargaining agreement to them, plus interest, and reimburse the trust funds provided for in the collective-bargaining agreement for those contributions Respondent has failed to make on behalf of unit employees. All backpay is to be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and *Florida Steel Corp.*, 231 NLRB 651 (1977).[6]

[Recommended Order omitted from publication.]

[5] In view of Grossman's uncontradicted testimony that on at least one occasion Ford mechanics worked on an Imports car without a repair order, and Kopf's lack of credibility in other regards coupled with the failure to offer documentary evidence to support his testimony, I do not credit Kopf that Imports contracted work out to Ford on a competitive basis.

[6] See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962).